

Major Facility Siting Act Presentation

January 29, 2009

Major Facility Siting Act

75-20-102. Policy and legislative findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility Siting Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(3) It is also constitutionally declared in the state of Montana that the inalienable rights of the citizens of this state include the right to pursue life's basic necessities, to enjoy and defend life and liberty, to acquire, possess, and protect property, and to seek safety, health, and happiness in all lawful ways. The balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans.

(4) The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities are in compliance with state law and that an electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of compliance acquired pursuant to this chapter.

(5) The legislature also finds that it is the purpose of this chapter to:

- (a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;
- (b) ensure consideration of socioeconomic impacts;
- (c) provide citizens with the opportunity to participate in facility siting decisions; and
- (d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter.

MFSA Definitions

Covered Facilities, Associated Facilities, and Commence to Construct Construction Time Limits

Covered Facilities 75-20-104 (8), MCA

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity within an existing easement or right-of-way; and

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

Associated Facilities 75-20-104 (3), MCA

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

Commence to construct 75-20-104 (6), MCA

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

Construction Time Limits 75-20-303 (4), MCA

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be completed within 5 years.

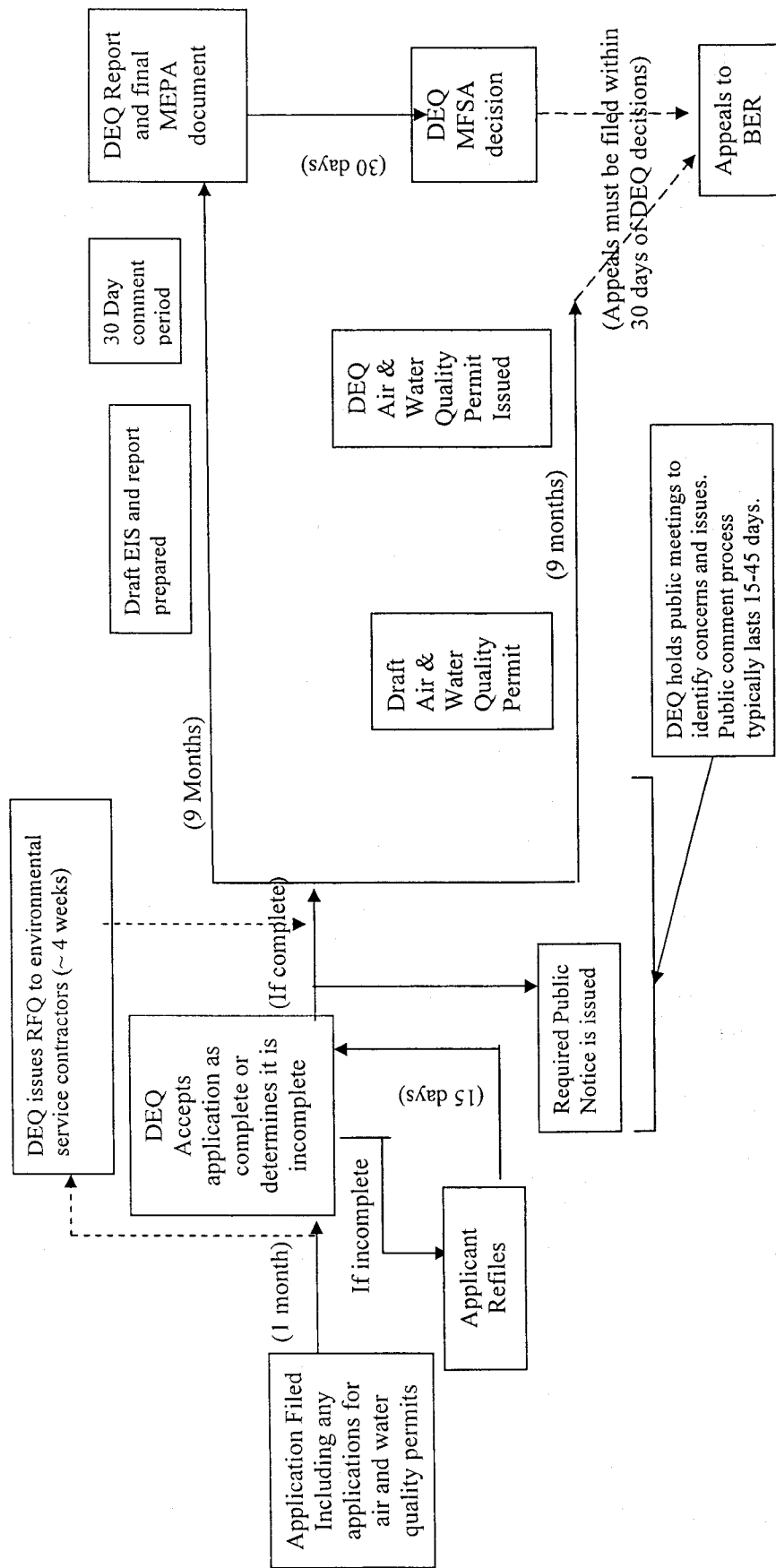
(iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

(d) Construction may begin immediately upon issuance of a certificate unless the department finds that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility.

MAJOR FACILITY SITING ACT APPLICATION AND REVIEW PROCESS



Notes:

1. For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.
2. A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.
3. See 75-20-207 and 208, MCA for procedures pertaining to the 75%-75% exemption provided in 75-20-104(8)(a)(ii), MCA
4. See 75-20-231 and 232, MCA for expedited review procedures and timelines
5. Approved projects greater than 30 miles long must be built within 10 years. Approved projects less than 30 miles in length, must be built within 5 years.

**Montana Alberta Tie Ltd. (MATL)
Project Chronology**

- October 7, 2005: Presidential Permit Application submitted
- December 2, 2005: MFSA Application received
- December 5 - 7, 2005: DEQ/DOE hold public scoping meetings in Great Falls, Conrad, and Cut Bank
- January 3, 2006: Completeness Review by DEQ
- June 26, 2006: Additional public meeting in Cut Bank due to MATL's changes to its proposal and alternatives
- February – December 2006: Numerous submittals and amendments of MFSA application by MATL and reviews and responses by DEQ
- March 9, 2007: State Draft EIS (DEIS)/Federal EA released
- March 2007: Public hearings on State DEIS/Federal EA in Great Falls, Conrad, and Cut Bank
- April 9, 2007: Initial close of 30 – day comment period on State DEIS/Federal EA
- April 30, 2007: Close of extended comment period
- June 7, 2007: DOE's Notice of Intent to prepare Federal DEIS
- June 2007: DEQ determines a supplement to the EIS is appropriate
- July 27, 2007: MATL submits application for ROW Grant to BLM
- July 30, 2007: MATL submits letter committing to monopoles on 53 miles of cropland crossed diagonally
- September – November 2007: MATL submits updates to MFSA application
- August 28, 2007: MATL submits results of Western Electricity Coordinating Council Phase II approval pertaining to grid interconnection and grid reliability
- September 10, 2007: DOE invites BLM to become cooperating agency
- December 21, 2007: Interconnection Agreement between MATL and NorthWestern
- February 15, 2008: State Supplemental EIS/Federal DEIS released with public hearings on State SEIS/Federal DEIS in Great Falls, Conrad, and Cut Bank March 11-13, 2008
- March 31, 2008: Close of 45-day comment period on State SEIS/Federal DEIS
- May - June 2008: MATL submits updates to MFSA application
- June 24, 2008: DEQ deems MATL application complete
- July 2008: MATL submits updates to MFSA application
- August 6, 2008: MATL amends MFSA application for a wider right of way
- September 25, 2008: Final EIS released
- October 22, 2008: State Certificate of Compliance issued
- November 17, 2008: DOE approval of the Presidential Permit

MFSA Findings 75-20-301, MCA

Decision of department -- findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) in the case of an electric, gas, or liquid transmission line or aqueduct:
 - (i) what part, if any, of the line or aqueduct will be located underground;
 - (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and
 - (iii) that the facility will serve the interests of utility system economy and reliability;
- (e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;
- (f) that the facility will serve the public interest, convenience, and necessity;
- (g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and
- (h) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands.

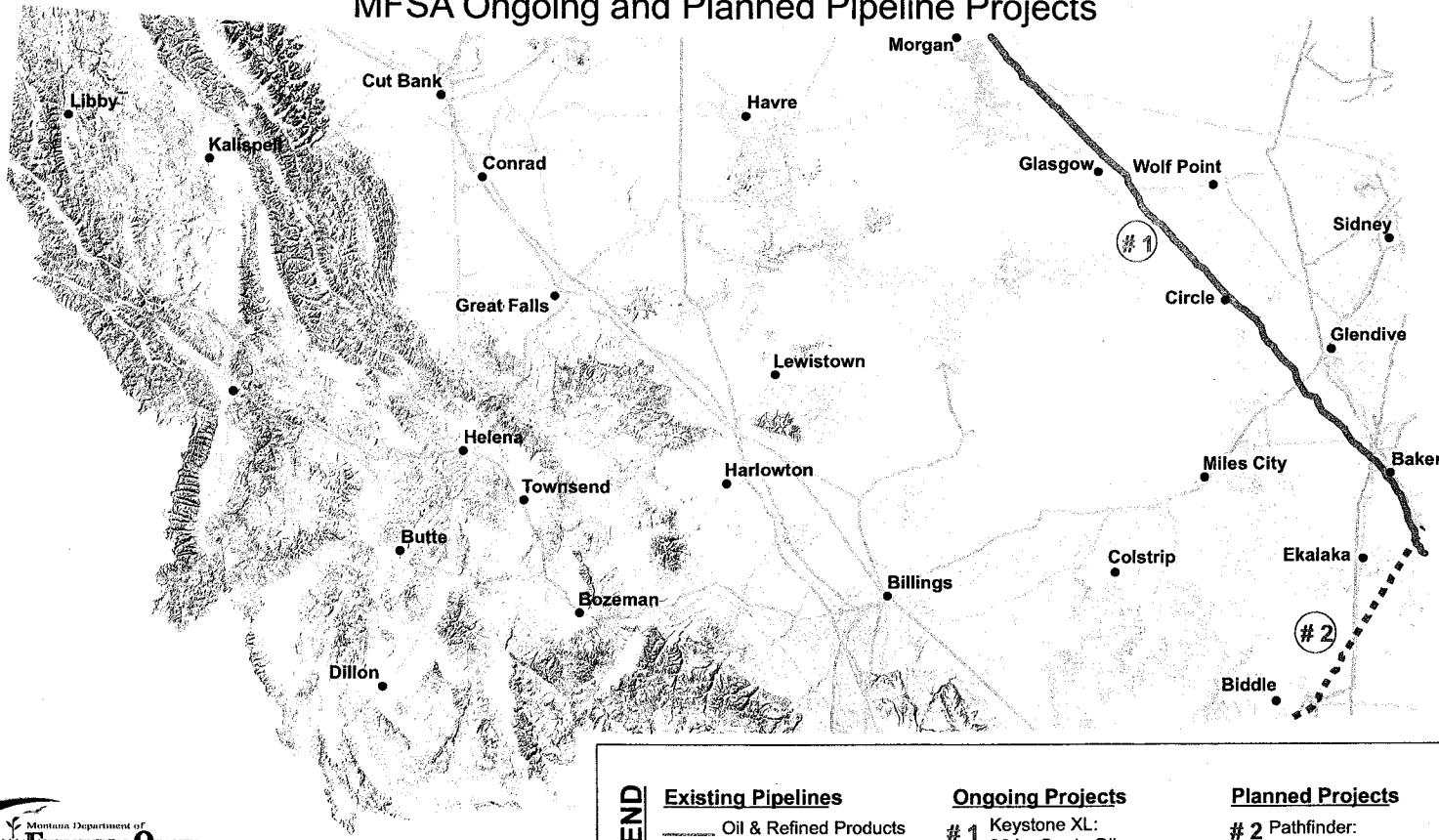
(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

- (a) the items listed in subsections (1)(a) and (1)(b);
- (b) the benefits to the applicant and the state resulting from the proposed facility;
- (c) the effects of the economic activity resulting from the proposed facility;
- (d) the effects of the proposed facility on the public health, welfare, and safety;
- (e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

- (a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and
 - (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:
 - (i) a violation of a law or standard that protects the environment; or
 - (ii) a violation of a law or standard that protects the public health and safety.
- (4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny the certificate.

MFSA Ongoing and Planned Pipeline Projects



This map created by C. Jones, January 2009.
 Sources: Keystone XL and Pathfinder, MT DEQ.
 Existing Pipelines, PennWell Corporation.
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LEGEND

Existing Pipelines

- Oil & Refined Products Pipelines
- Natural Gas Pipelines

Ongoing Projects

- # 1 Keystone XL:
36 in. Crude Oil

Planned Projects

- # 2 Pathfinder:
42 in. Natural Gas

MFSA Ongoing and Planned Transmission Projects. Other Ongoing Projects

